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National Association of Certified Public Accountants, a corporation, appellant, vs. The United States of America. Brief for appellant. In the Court of Appeals of the District of Columbia, October term, 1922. No. 3870

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Statement of Case.

The United States by its attorney for the District of Columbia filed under sec. 793 of the Code a bill against appellant, a corporation, under sec. 599 of the Code.

The bill alleged that appellant was holding itself out as empowered to issue degrees or certificates, without any authority of law, in an utterly careless manner, and against the public policy of the District of Columbia.

The bill alleges appellant issued to an applicant in Virginia one of its certificates but does not allege anything wrong or unlawful about this.

The bill further alleges that certain persons in California perpetrated a fraud on appellant by giving fictitious names and recommndations and appellant issued one of its certificates in the fictitious name of an applicant for same.

The bill alleges that appellant issued one of its certificates to a person in Kentucky, "in a manner derogatory to the public interests of the State of Kentucky."

On filing the bill, rule to show cause was issued and for return appellant moved to dismiss and was overruled, and preliminary injunction was granted.

Appellant answered and moved to dissolve injunction, and appellee moved to strike out answer and for a decree pro confesso.

Court overruled motion to dissolve, made no decree pro confesso, but a final decree permanently enjoining appellant from making any use of its charter. Appellant duly excepted and appealed.

The provisions of the charter of appellant in exact words, permit it to do what it was doing, but notwithstanding said charter provisions, appellee contends that appellant was doing what is "not by law allowed to be assumed or exercised by said corporation."

Sec. 575 of the Code in relation to incorporating—

"Institutions of Learning"

provides they are empowered to confer academical or honorary degrees such as are conferred by similar institutions.

Sec. 599 of the Code under which appellant is incorporated provides for incorporating—

"Societies, Benevolent, Educational and So Forth."

First mentioned requires five incorporators, second requires three, and appellant was incorporated with four.

ARGUMENT.

Appellee can maintain this action only under the provisions in the Code authorizing the same which are either that appellant was doing something not allowed by its charter, or doing something not allowed by law, but the

charter expressly provides that appellant may do exactly what it was doing, and therefore the only ground on which this action can be maintained is that appellant was doing something not allowed by law to be assumed or exercised by it (Code, D. C., 793).

The bill alleges that appellant was acting in an utterly careless manner, in a manner derogatory to the public interests of the State of Kentucky; against the public policy of the District of Columbia, and without authority of law.

As a matter of fact, appellant had not done anything in an utterly careless manner, and what it had done, if done in that way, would not be a violation of law. This is not a law action for damages for negligence.

As a matter of fact appellant has not done anything in a manner derogatory to the public interests of the State of Kentucky, and as a matter of law it can not do anything in the District of Columbia in a manner derogatory to the public interests of the State of Kentucky.

District of Columbia is created by Congress—"a government—a body corporate, for municipal purposes," and it has no public policy in the ordinary acceptance and understanding of that expression, and none defined by any law or otherwise, and the bill makes no allegation as to what such policy is, or how appellant has offended against it.

Degree as used by appellant is not an academic or honorary degree such as is conferred by institutions of learning, and the attainments of a person expert in accounting do not entitle him to an academic or honorary degree such as are conferred by institutions of learning.

There are degrees of temperature, degrees in mathematics, degrees of offenses, density, etc., etc., degrees of lodges, societies and organizations, but the distinctions

between these and the degrees conferred by institutions of learning are well-known and well understood, and the only meaning or use of the word degree that has any place in this litigation is *academical* or *honorary*, such as are conferred by institutions of learning.

Institutions of learning have been defined by our Court of Appeals as follows:

> "Those organizations of a permanent nature wherein the higher branches of education only are those in which instruction is given."
>
> U. S. ex rel. Chicago Business College *vs.* Payne, 20 App. D. C., 606.

There are no allegations in the bill that appellant is such an institution as the Court of Appeals defines in its above cited definition, and there is no word of proof to show it to be such an institution and for that reason alone the decree from which appeal is taken herein should be reversed.

If there be nothing to show appellant within that definition there is nothing in this case on which to justify affirming the trial court.

So far as appellant has been able to learn no such institution confers the degree of certified public accountant and the first use of the word degree in that connection was made by appellant and it was and is a degree in name only, and not such as is contemplated by our local statute (Code, sec. 575).

Appellee contends that because appellant used the word degree in its certificate it was doing what can be done only by an institution of learning, and that being incorporated under section 599 and having but four incorporators it is not an institution of learning, and was violating the law.

Articles of incorporation of appellant provide its purposes are:

> "To bring together in one common union certified public accountants who are now, or heretofore have been, engaged in the practice of professional accounting; also, those who, by virtue of education, personal endowments, technical training and experience are qualified to perform the duties pertaining to professional accounting; to provide for the admission of members, and when said members shall have presented satisfactory evidence of knowledge in the theory and practice of accounting, and shall have satisfactorily passed the prescribed qualifying examination of the association to admit said members to the degree of certified public accountant, and to issue to such members the Association's formal certificate to that degree pertaining, to safeguard the rightful professional interests and promote the friendly, and social, and public relations of the members of this corporation; and to do all else incident, appurtenant, and germane to the purposes and objects of this corporation" (Rec., p. 8).

Body of certificate issued by appellant is as follows:

> "Be it known that.....
> having presented satisfactory evidence as to his knowledge of the Theory, Science, and Practice of Accountancy, or having passed the prescribed examination is hereby admitted to Membership in this Association, and upon him is conferred the Degree of Certified Public Accountant and as such is entitled to all the honors, rights, and privileges to that Degree appertaining (Rec., p. 15).

Contention of appellee was adopted by the court, and appellant's answer was struck out on the theory that so long as appellant admitted being incorporated under Section 599, it could not have any defense in

this case, and therefore decree should be rendered against it as by default, but neither court or counsel have suggested under what law or practice it is permissible to strike out an answer as in this case was done.

The court has decreed against the appellant on the theory that the word degree as used by appellant constituted a violation of law in contemplation of the following mentioned considerations:

(a) The court, without any testimony, found as a fact that appellant conferred the degree of certified public accountant in its certificate of membership.

(b) That the degree of certified public accountant is an academic or honorary degree such as are conferred by institutions of learning.

(c) That appellant is not an institution of learning.

On these findings of fact, without any testimony, the court held as a matter of law, that appellant was doing what is "not by law allowed to be assumed or exercised by said corporation."

"Degree" is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression composed in whole or in part of words recognized as indicative of academic rank, alone or in combination with other words, so that there is conveyed to the ordinary mind the idea of some collegiate or university or scholastic distinction.

> Commonwealth *vs.* New England College of Chiropractic, 221 Mass., 190.

In this chiropractic case, discussing degrees, the Massachusetts court say, that if the evidence was believed, it warranted a finding by the jury that doctor of chiropractic was treated as a degree, but the testimony in the case showed it was conferred similar to the

conferring of degrees by colleges or universities at commencement.

And further: "There are three general grades of such degrees; namely, Bachelor, Master, Doctor."

And further degree "signifies an academic distinction," and includes whatever *properly* may be *described* as a degree.

What is a degree depends on what is described as such, and depends on facts and circumstances on proof of how the word is sued, by whom, and under what circumstances.

No authority has been suggested as a basis for sustaining the contention of appellee and the decree of the court.

If the court passed upon the whole case its decree was so apparently an error that there is no need of argument to show that, but having struck out the answer there is left no room for it to be considered as sufficient or not sufficient to answer or swear away the allegations of the bill and entitle appellant to be heard on the merits of the case.

And all that is beside the question and unnecessary to be considered, if this court takes the view of the case which appellee and the trial court took of it, that no matter what the pleadings may show as to what was done, or was not done, or when, or where, or how anything was done by appellent, the sole question is as to the use by appellant of the word degree, and that same may be rightly determined in this case as a matter of law, without testimony as to facts and circumstances of the case, and without giving appellant its day in court to show the facts.

Before this court should affirm the trial court it must go further and hold that the trial court was right as to procedure in doing what it has done, and right in its decision as to the use of the word degree by appellant

and that it was doing what is "not by law allowed to be assumed or exercised by said corporation."

It must be conceded that appellant, by issuing certificates in the form they were issued, was not exercising any franchise, liberty or privilege or transacting any business not allowed by its charter or certificate of incorporation, for the record shows that the certificate of incorporation expressly gave it the privilege of issuing its certificates in the exact words in which they were issued, and such form is here complained about by the United States through the District Attorney. This certificate of incorporation is a contract between the United States and the corporation, and in issuing its certificates in the manner and form in which they were issued the corporation was doing exactly that which by virtue of its contract with the United States it had the right to do.

This narrows the controversy to the only other provision of Section 793 of our Code under which this action might be maintained, that is to say, that appellant is exercising a franchise, liberty or privilege or transacting business not by law allowed to be assumed or exercised by said corporation. What is the franchise, liberty, privilege or business being done by this corporation which is not by law allowed to be done? This seems to us to be the only question involved in this cause. The real complaint alleged in the bill is that appellant is issuing degrees, which, while allowed by the contract between the United States and appellant, are yet not allowed by law because only institutions of learning can issue degrees, and appellant is not an institution of learning. We say that the word degree as used in the certificates issued by appellant is not such a degree as comes within the provisions of Section 575 of the Code, and is neither academical or honorary, and that the form of certificate is therefore legal and proper and that appellant has a legal right to issue certificates in the form in which they were being

issued and in so doing controverts no law of the District of Columbia.

Appellant contends that whether or not this use of the word degree constituted a violation of law, whether or not appellant is an institution of learning, whether or not the use of this word degree in the certificates of appellant constitutes conferring an academical or honorary degree such as are conferred by institutions of learning all depend on facts and circumstances, and that appellant had a right to be heard as to same.

Appellant further contends that striking out the answer and passing final decree as was done in this case is without authority or justification in law or equity, or good conscience.

It is respectfully submitted that the trial court should be reversed.

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